

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Edgar Jr., et al.

Serial No.: 09/546,260

Filed: April 10, 2000

For: METHOD, APPARATUS AND  
SYSTEM FOR REMOVING MOTION  
ARTIFACTS FROM MEASUREMENTS OF  
BODILY PARAMETERS

Patent No.: 6,519,486

Attorney Docket No.: 2181-4326US

CERTIFICATE OF MAILING

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as First Class Mail on the date of deposit shown below with sufficient postage and in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

February 10, 2004  
Date

Signature

Joseph A. Walkowski  
Name (Type/Print)

Best Available Copy

STATEMENT PURSUANT TO 37 C.F.R. § 3.73

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 3.73, the undersigned representative of the Assignee has reviewed the evidentiary documents relating to Assignment of U.S. Patent No. 6,519,486 (Patent '486) by the inventors to NTC Technology Inc. The Assignment to NTC Technology Inc. results from three separate but related Assignments. First, an Assignment from two of the inventors (Reuben W. Edgar, Jr. and August J. Allo, Jr.) to Southwest Research Institute was recorded on Sep. 18, 2000 at Reel/Frame 011105/0280. Next, an Assignment from Southwest Research Institute to NTC Technology Inc. was recorded on Sep. 18, 2000 at Reel/Frame 011105/0253. Finally, an Assignment from the other four inventors (Paul B. Gunneson, Jesus

D. Martin, John R. DeFavero, and Michael B. Jaffe) to NTC Technology Inc. was recorded on Sep. 18, 2000 at Reel/Frame 011105/0264. Therefore, NTC Technology Inc. owned Patent '486 on or before Sep. 18, 2000.

Further and also pursuant to 37 C.F.R. § 3.73, the undersigned representative of the Assignee hereby submits documentary evidence of a chain of title, relating to Patent '486, from NTC Technology Inc. (Original Owner) to RIC Investments, Inc. (Assignee). Copies of the relevant company merger and Assignment documents are enclosed herewith as Attachments A through D.

As evidenced by Attachment A, on Dec. 19, 2002 NTC Technology Inc. merged into Respironics Novamatrix, Inc.

Thereafter, as evidenced by Attachment B, on Dec. 31, 2002 Respironics Novamatrix, Inc. merged with and into Respironics Novamatrix, LLC.

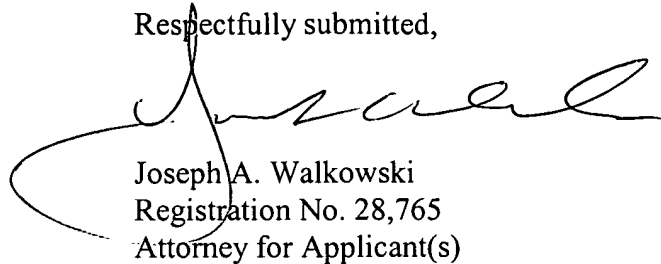
Thereafter, as evidenced by Attachment C, effective Jan. 1, 2003 Respironics Novamatrix, LLC made a dividend distribution of, among other things, all patents and patent applications owned by Respironics Novamatrix, LLC to "the Member" of Respironics Novamatrix, LLC. As shown in the last page of Attachment C, the sole Member of Respironics Novamatrix, LLC is Respironics, Inc.

Immediately thereafter, as evidenced by Attachment D, effective Jan. 1, 2003 Respironics, Inc. assigned to and for the benefit of RIC Investments, Inc., certain intellectual property rights, including all patents and patent applications.

As a result, the undersigned representative certifies that to the best of his knowledge and belief, the present Assignee of Patent '486 is RIC Investments, Inc., and title remains in the name of RIC Investments, Inc.

The undersigned further avers that he is empowered to make and sign the foregoing certification on behalf of the Assignee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Walkowski', with a large, sweeping loop at the end.

Joseph A. Walkowski  
Registration No. 28,765  
Attorney for Applicant(s)  
TRASKBRITT  
P.O. Box 2550  
Salt Lake City, Utah 84110-2550  
Telephone: 801-532-1922

Date: February 10, 2004

JAW/ljb

Document in ProLaw

**Attachment A**  
(3 pages)

# Delaware

PAGE 1

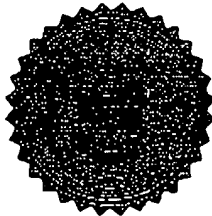
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"NOVAMETRIX ACQUISITION CORP.", A DELAWARE CORPORATION,  
"NOVAMETRIX INTERNATIONAL, LIMITED", A DELAWARE CORPORATION,  
"NTC MANAGEMENT INC.", A DELAWARE CORPORATION,  
"NTC TECHNOLOGY INC.", A DELAWARE CORPORATION,  
"WALLINGFORD SALES CORP.", A DELAWARE CORPORATION,

WITH AND INTO "RESPIRONICS NOVAMETRIX, INC." UNDER THE NAME OF "RESPIRONICS NOVAMETRIX, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF DECEMBER, A.D. 2002, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

0850901 8100M

AUTHENTICATION: 2162526

020785621

DATE: 12-20-02

**CERTIFICATE OF OWNERSHIP AND MERGER  
MERGING  
NTC TECHNOLOGY INC.,  
WALLINGFORD SALES CORP.,  
NTC MANAGEMENT INC.,  
NOVAMETRIX INTERNATIONAL, LIMITED  
AND  
NOVAMETRIX ACQUISITION CORP.  
INTO  
RESPIRONICS NOVAMETRIX, INC.**

Respironics Novametrix, Inc., a corporation organized and existing under the laws of Delaware ("Novametrix"), does hereby certify:

**FIRST:** That Novametrix was incorporated on March 13, 1978 pursuant to the General Corporation Law of the State of Delaware.

**SECOND:** That Novametrix owns all of the outstanding shares of the stock of:

- a. NTC Technology Inc., a corporation incorporated on May 11, 1989 pursuant to the general Corporation Law of the State of Delaware;
- b. Wallingford Sales Corp., a corporation incorporated on December 1, 2000 pursuant to the General Corporation Law of the State of Delaware;
- c. NTC Management Inc., a corporation incorporated on May 11, 1989 pursuant to the General Corporation Law of the State of Delaware;
- d. Novametrix International, Limited, a corporation incorporated on April 17, 1979 pursuant to the General Corporation Law of the State of Delaware; and
- e. Novametrix Acquisition Corp., a corporation incorporated on July 26, 1996 pursuant to the General Corporation Law of the State of Delaware.

**THIRD:** That Novametrix, by the following resolutions of its Board of Directors, duly adopted by the unanimous written consent of its members, filed with the minutes of the Board, on the 16<sup>th</sup> day of December, 2002, determined to and did merge into itself said NTC Technology Inc., Wallingford Sales Corp., NTC Management Inc., Novametrix International, Limited and Novametrix Acquisition Corp.:

**RESOLVED**, that Novametrix merge, and it hereby does merge, into itself the said NTC Technology Inc., Wallingford Sales Corp., NTC Management Inc., Novametrix International, Limited and Novametrix Acquisition Corp. and assumes all of their obligations;

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 12/19/2002  
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DEC-13-2002 16:34

REED SMITH PGH SCP

4122685345 P.06

RESOLVED FURTHER, that the merger shall be effective on filing with the Secretary of State of Delaware;

RESOLVED FURTHER, that the proper officer of Novamatrix be and he or she is hereby directed to make and execute a Certificate of Ownership and Merger setting forth a copy of the resolutions to merge said NTC Technology Inc., Wallingford Sales Corp., NTC Management Inc., Novamatrix International, Limited and Novamatrix Acquisition Corp. into Novamatrix and assume their liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the Delaware Secretary of State and to do all acts and things whatsoever, either within or without the State of Delaware, which may be in any way necessary or proper to effect said merger.

FOURTH: Anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Novamatrix at any time prior to this Certificate of Ownership and Merger being filed with the Secretary of State.

IN WITNESS WHEREOF, said Novamatrix has caused this Certificate of Ownership and Merger to be signed by its duly authorized officer this 16<sup>th</sup> day of December, 2002.

RESPIRONICS NOVAMETRIX, INC.

By James C. Wall  
Name James C. Wall  
Title Vice President

**Attachment B**  
(3 pages)



(12)

# Delaware

PAGE 1

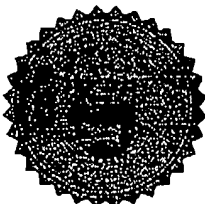
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"RESPIRONICS NOVAMETRIX, INC.", A DELAWARE CORPORATION, WITH AND INTO "RESPIRONICS NOVAMETRIX, LLC" UNDER THE NAME OF "RESPIRONICS NOVAMETRIX, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF DECEMBER, A.D. 2002, AT 4:53 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2002, AT 11:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3584148 8100M

AUTHENTICATION: 2175713

020785624

DATE: 12-30-02

(13)

DEC-19-2002 15:35

REED SMITH PGH SCP

STATE OF DELAWARE 11  
2005538  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 04:53 PM 12/19/2002  
020785624 - 3584148

**CERTIFICATE OF MERGER  
OF  
RESPIRONICS NOVAMETRIX, INC.  
INTO  
RESPIRONICS NOVAMETRIX, LLC**

Pursuant to Section 18-209 of the Delaware Limited Liability Company Act, the undersigned surviving limited liability company submits the following Certificate of Merger for filing and certifies that:

**FIRST.** The name and jurisdiction of formation or organization of the limited liability company and corporation which are to merge are:

<u>Name</u>	<u>Jurisdiction</u>	<u>Type of Entity</u>
Respironics Novamatrix, Inc.	Delaware	Corporation
Respironics Novamatrix, LLC	Delaware	Limited Liability Company

**SECOND.** An Agreement and Plan of Merger has been approved and executed by the domestic limited liability company and corporation which are to merge.

**THIRD.** The name of the surviving limited liability company is Respironics Novamatrix, LLC

**FOURTH:** The Merger shall become effective at 11:59 p.m. on December 31, 2002.

**FIFTH:** The Agreement and Plan of Merger is on file at a place of business of the surviving limited liability company which is located at 5 Technology Drive, Wallingford, Connecticut 06492.

**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving limited liability company, on request and without cost, to any member of the domestic limited liability company or any person holding an interest in any other business entity which is to merge.

(14)

DEC-19-2002 16:35

REED SMITH PGH SCP

4122885345 P.12

IN WITNESS WHEREOF, this Certificate of Merger has been duly executed as of the 16<sup>th</sup> day of December, 2002, and is being filed in accordance with Section 18-209 of the Act by an authorized person of the surviving limited liability company in the merger.

RESPIRONICS NOVAMETRIX, LLC

By: James C. Wolf  
Name: James C. Wolf, Vice President  
Authorized Person

**Attachment C**  
(3 pages)

5

**RESPIRONICS NOVAMETRIX, LLC****Action by Consent in Writing of the Managers**

The undersigned, being all the Managers of Respiration Novamatrix, LLC, a Delaware limited liability company (the "Company"), hereby adopt the following resolutions, effective January 1, 2003 immediately following the distribution of certain intellectual property from Children's Medical Ventures, LLC to the Company (the "Effective Time"), by consent in writing as permitted by Section 5.1 of the Company's Operating Agreement with the same force and effect as though such resolutions had been adopted at a duly convened meeting of the Managers of the Company and do hereby waive all notice requirements in connection with said meeting:

**Approval of Distribution of Dividend**

WHEREAS, the Managers of the Company may make distributions of property to the Member of the Company, as permitted by Section 11.1 of the Company's Operating Agreement;

WHEREAS, the Company has received a distribution of certain intellectual property from Children's Medical Ventures, LLC, a Delaware limited liability company; and

WHEREAS, the Managers of the Company desire to distribute such intellectual property and certain other intellectual property of the Company to the Member of the Company;

NOW, THEREFORE, BE IT:

RESOLVED, that the Managers of the Company have determined that the distribution contemplated by these resolutions is in the best interests of the Company and is undertaken for good and valid business reasons, including enabling the Company to more accurately assess the performance and value of its various operations apart from the value added by its intellectual property, to isolate intellectual property ownership into a separate legal entity to provide efficiencies within the Company's current organizational structure and to align the Company's assets and personnel, intellectual property and financial resources in order to focus the Company on its long-term business strategy;

FURTHER RESOLVED, that the Managers of the Company have determined, in their judgment, that the distribution contemplated by these resolutions will not render the Company insolvent or impair its ability to discharge its obligations or interfere with the ability of the Company to carry out its purposes;

FURTHER RESOLVED, that there be and hereby is declared and approved a distribution of a dividend to the Member of the Company of the

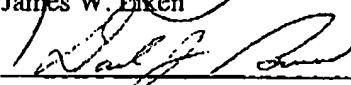
(6)

following intellectual property owned by the Company at the Effective Time: all inventions, know-how and technology, whether patentable or not; all patents and patent applications; those trade secrets and proprietary data incorporated within the Company's products; all trademarks, service marks and trade names and applications and registrations therefor, and all goodwill associated with such trademarks, service marks and trade names; and all copyright rights whether registered or not; provided, however, that any such item shall not be distributed to the extent that such distribution would violate its terms and/or require consent by another party if such consent has not been obtained by the Company as of the Effective Time or is prohibited by law;

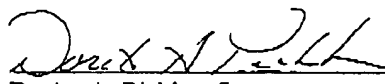
FURTHER RESOLVED, that in furtherance of the dividend and matters relating thereto, the Managers of the Company, and each of them, be and they hereby are, authorized, empowered and directed, for and on behalf of the Company, to do and perform each and every act and thing and to execute and deliver any and all agreements, plans and arrangements, as such Managers may deem necessary, advisable or appropriate to implement the intent and purpose of the preceding resolutions; and

FURTHER RESOLVED, that any and all actions of the Company and its Managers and employees heretofore or hereafter taken in connection with the dividend and matters relating thereto are hereby ratified, approved and confirmed in all respects as the acts and deeds of the Company.

WITNESS the due execution hereof as of the 19<sup>th</sup> day of December, 2002.

  
James W. Liken  
Daniel J. Bevevino  
Steven P. Fulton

The undersigned certifies that the above Consent has been duly filed with the minutes of the Company.

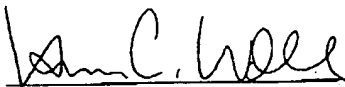
  
Dorita A. Pishko, Secretary

**RESPIRONICS, INC.**  
**AND**  
**RESPIRONICS NOVAMETRIX, LLC**  
**OFFICER'S CERTIFICATE**

I, James C. Woll, a duly elected and qualified Vice President of Respiroincs, Inc., a Delaware corporation ("Respiroincs"), and Respiroincs Novamatrix, LLC, a Delaware limited liability company ("Respiroincs Novamatrix"), do hereby certify in my capacity as Vice President of Respiroincs and Respiroincs Novamatrix, that:


Respiroincs is on the date hereof, and has been since the date of formation of Respiroincs Novamatrix, the sole member of Respiroincs Novamatrix.

IN WITNESS WHEREOF, I have hereunto set my hand as Vice President of Respiroincs and Vice President of Respiroincs Novamatrix this 7th day of October, 2003.

  
\_\_\_\_\_  
James C. Woll

I, the undersigned, Eileen R. Sisca, Associate General Counsel of Respiroincs, do hereby certify that James C. Woll is a duly elected, qualified and acting Vice President of Respiroincs and Respiroincs Novamatrix and that the signature above is his true and genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand as Associate General Counsel of Respiroincs, this 7<sup>th</sup> day of October, 2003.

  
\_\_\_\_\_  
Eileen R. Sisca

**Attachment D**  
(4 pages)



①

### CONTRIBUTION AND ASSIGNMENT

THIS CONTRIBUTION AND ASSIGNMENT (this "Assignment"), made and entered into this 16<sup>th</sup> day of December, 2002 to be effective as of January 1, 2003 immediately following the distribution to Respironics, Inc. of certain intellectual property of Respironics Novamatrix, LLC (the "Effective Time"), by RESPIRONICS, INC., a Delaware corporation ("Assignor"), to and for the benefit of RIC INVESTMENTS, INC., a Delaware corporation ("Assignee").

WHEREAS, Assignor will acquire certain intellectual property through the merger of Respironics Georgia, Inc. with and into Assignor on December 31, 2002 (the "RIGA Intellectual Property") and through the distribution of certain intellectual property from Respironics Novamatrix, LLC to Assignor on January 1, 2003, which intellectual property includes intellectual property distributed to Respironics Novamatrix, LLC by Children's Medical Ventures, LLC (the "Novamatrix Intellectual Property");

WHEREAS, to centralize management and administration of the intellectual property acquired by Assignor; to enable Assignor to more accurately assess the performance and value of its various operations apart from the value added by its intellectual property; to hold, manage, protect, defend and enhance the value of such intellectual property; to facilitate operation of an asset management company in the United States in order to analyze the performance of such valuable intellectual property; to isolate intellectual property ownership into a separate legal entity to provide efficiencies within the Assignor's current organizational structure; to align the Assignor's assets and personnel, intellectual property and financial resources in order to focus the organization on its long-term business strategy; to impose on the Assignor financial burdens similar to that of other competitors; to protect Assignor in the event of a hostile takeover attempt; to provide a centralized system to deal with the intellectual property on a worldwide basis; to avoid conflicts between maximizing the value of the intellectual property and operational strategies by segregating the management of intellectual property from Assignor's other operations; and to allow the future licensing of the intellectual property;

WHEREAS, for such good and valid business purposes, including those listed above, Assignor determined it would be in its best interests to transfer certain intellectual property of Assignor to Assignee;

WHEREAS, Assignor incorporated Assignee on July 1, 1991, as a wholly-owned subsidiary for good and valid business purposes, including those listed above; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to legally bound hereby, and in accordance with Section 351 of the Internal Revenue Code of 1986, Assignor does hereby absolutely and unconditionally assign, transfer, contribute, set over and deliver to Assignee all of Assignor's rights, titles and interests in and to the following (collectively, the "Assigned Properties"):

②

The following RIGA Intellectual Property and Novamatrix Intellectual Property owned by Assignor at the Effective Time: all inventions, know-how and technology, whether patentable or not; all patents and patent applications; those trade secrets and proprietary data incorporated within Assignor's products; all trademarks, service marks and trade names and applications and registrations therefor, and all goodwill associated with such trademarks, service marks and trade names; and all copyright rights whether registered or not; provided, however, that any such item shall not be assigned to the extent that such assignment would violate its terms and/or require consent by another party if such consent was not timely obtained by Assignor as of the Effective Time or is prohibited by law, except that if such consent or approval is obtained within 180 days of execution hereof such item shall be assigned as provided herein on the date such consent or approval is obtained;

TO HAVE AND TO HOLD unto Assignee and Assignee's successors and assigns forever.

AND Assignor further agrees with Assignee as follows:

1. The person executing this Assignment has the authority to execute and deliver this Assignment. This Assignment constitutes the legal, valid and binding obligation of Assignor, enforceable in accordance with its terms. Assignor is the true and lawful owner of each of the Assigned Properties and will warrant and defend the title of said Assigned Properties against the lawful claims and demands of every kind or type of all persons whomsoever.
2. If, after the date of transfer of the Assigned Properties, Assignee reasonably determines that items of property or other rights necessarily related or ancillary to the Assigned Properties in accordance with the parties' intentions hereunder were not transferred to Assignee, then, upon the request of Assignee, Assignor shall cooperate with Assignee and use commercially reasonable efforts to assign to Assignee such items of property or other rights.
3. The provisions of this Assignment are intended to be severable. If any provision of this Assignment shall be held invalid or unenforceable, in whole or in part, such provision shall be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of any other provision of this Assignment.
4. This Assignment shall be governed by the laws of the State of Delaware, without regard to conflict of laws rules.

③

5. Nothing herein contained shall be deemed to limit or restrict the properties, assets or rights conveyed, assigned or transferred to or acquired by Assignee from Assignor under or by virtue of any other conveyance.

IN WITNESS WHEREOF, and intending to be legally bound, Assignor and Assignee have caused this Assignment to be executed by their duly authorized officers as of the date first above written.

RESPIRONICS, INC., a Delaware corporation

By: 

Name: James W. Niven

Title: President & CEO

RIC INVESTMENTS, INC., a Delaware corporation

By: 

Name: James C. Woll

Title: President

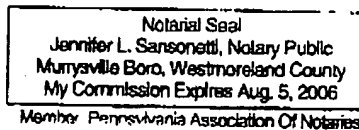
## ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA )  
 )  
 ) SS:  
COUNTY OF WESTMORELAND )

On this, the 18<sup>th</sup> day of December, 2002, before me, Jennifer L. Sansonetti, the undersigned officers, appeared James W. Liken who being by me duly sworn, did say that he is the President and CEO of Respirationics, Inc., and James C. Woll, who being by me duly sworn, did say that he is the President of RIC Investments, Inc., and that they, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jennifer Hammond  
Notary Public



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